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April 11, 2022

VIA ELECTRONIC DELIVERY

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Investment Company Act Release No. 34441 (File No. S7-22-21), Money Market Fund Reforms

Dear Ms. Countryman:

We appreciate the opportunity to respond to the request by the U.S. Securities and Exchange Commission ("SEC" or "Commission") for comments regarding the above-referenced release (the "Proposing Release"). In the Proposing Release, the SEC proposed amendments to Rule 2a-7 under the Investment Company Act of 1940, as amended (the "1940 Act"), which governs money market funds ("money funds"), and related amendments to Form N-MFP, Form N-CR and Form N-1A (collectively, the "Proposed Amendments").[1] The Proposed Amendments would, among other things: (i) remove liquidity fee and redemption gate provisions from Rule 2a-7; (ii) impose a new swing pricing regime for non-government institutional money funds (*i.e.,* institutional prime and institutional tax-exempt money funds); (iii) substantially raise minimum liquidity levels for all money funds; and (iv) amend certain reporting and disclosure requirements in Form N-MFP, Form N-CR and Form N-1A. In addition, the SEC indicated in the Proposing Release that, in a negative interest rate environment, it may be inappropriate for a stable net asset value ("NAV") money fund with a gross negative yield to continue to seek to maintain a stable NAV. Relatedly, the Proposed Amendments would: (i) require a stable NAV money fund to determine that its financial intermediaries can continue to process its share transactions in the event that the fund converts to a floating NAV and (ii) prohibit a stable NAV money fund from seeking to maintain a stable NAV per share by reducing the number of its shares outstanding (including through a "reverse distribution mechanism").

Dechert LLP is an international law firm with a wide-ranging financial services practice that serves clients in the United States and abroad. In the United States, we represent a substantial number of U.S. mutual fund and ETF complexes, fund boards, fund independent directors, fund advisers, and service providers to funds. Our clients include several of the largest money fund complexes and/or

[1] *See* Money Market Fund Reforms, Investment Company Act Release No. 34441 (Dec. 15, 2021).

their sponsors. In developing these comments, we have drawn on our extensive experience in the financial services industry generally and with money fund regulation specifically. Although we have discussed certain matters addressed in the Proposing Release with some of our clients, the comments that follow reflect only the views of a group of attorneys in our financial services practice, and do not necessarily reflect the views of our clients, other members of our financial services group or the firm generally.

Although we generally support the Commission's goal of improving and strengthening the regulation of money funds, we offer these comments primarily to address certain aspects of the Proposed Amendments on which we believe the Commission either should provide more guidance or should modify or reconsider its approach.

I. REMOVAL OF LIQUIDITY FEE AND REDEMPTION GATE PROVISIONS

The Proposed Amendments would remove provisions in current Rule 2a-7 that permit (or under certain circumstances require) a money fund to impose liquidity fees. The Proposed Amendments also would remove provisions in current Rule 2a-7 that permit a money fund to impose a redemption gate (*i.e.*, a temporary suspension of redemptions).

We support the SEC's proposed removal of the liquidity fee and redemption gate provisions from Rule 2a-7. In this regard, we strongly agree with the SEC's observation in the Proposing Release that the current liquidity fee and redemption gate provisions appear to have ultimately contributed to investors' incentives to redeem from non-government institutional money funds in March 2020 and thereby heightened the redemption pressures experienced by such funds during that time.

In connection with the proposed removal of redemption gate provisions from Rule 2a-7, the SEC stated in the Proposing Release that the Proposed Amendments would not impact a money fund's ability to suspend redemptions pursuant to Rule 22e-3 under the 1940 Act in order to facilitate an orderly liquidation. However, we urge the Commission to consider whether it remains appropriate to continue to include as one of the conditions for relying on Rule 22e-3 the current condition in Rule 22e-3(a)(1) that a money fund must have less than 10% of its total assets in weekly liquid assets. In light of the proposed removal of the liquidity fee provisions from Rule 2a-7, including the default liquidity fee provision for non-government money funds with weekly liquid assets that fall below 10% of their assets, we do not believe that the 10% weekly liquid asset threshold would remain meaningful to liquidation determinations if the Proposed Amendments are adopted.[2] Instead, we believe it would be more appropriate to replace this condition with a condition that affords the fund's board of directors with discretion to rely on the rule when it determines that doing so is in the best interests of the fund – for example, if the board determines that the fund's

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[2] The Proposed Amendments would similarly no longer require a money fund to stress test its ability to have at least 10% of its total assets in weekly liquid assets.

continuation may result in material dilution or other unfair results to investors or existing shareholders.

II. PROPOSED SWING PRICING REQUIREMENT

The Proposed Amendments would impose a mandatory swing pricing regime as a new mechanism for non-government institutional money funds to allocate perceived dilutive redemption costs to redeeming investors and eliminate a potential first-mover advantage. Unlike liquidity fees under current Rule 2a-7, swing pricing under the Proposed Amendments would be applied in the normal course of operations whenever these money funds experience net redemptions, irrespective of market conditions and without requiring specific action from their boards of directors, and would apply to both share purchase and redemption transactions.

We oppose a mandatory swing pricing regime for non-government institutional money funds for the following reasons:

- **Swing Pricing Poses Significant Operational Challenges.** We believe that swing pricing would pose significant operational challenges that would fundamentally alter the utility of these funds for investors and further exacerbate the trend of outflows that these funds have recently experienced.

- **Swing Pricing Was Previously Rejected as Inappropriate for Money Funds.** When adopting the voluntary swing pricing regime for open-end investment companies in Rule 22c-1 under the 1940 Act, the SEC stated that swing pricing would be inappropriate for money funds due to their unique minimum liquid investment requirements and their investors' sensitivity to volatility of principal. We believe these concerns remain relevant.

- **Swing Pricing May Have Unintended Dilutive Costs.** We believe that swing pricing as set forth in the Proposed Amendments may itself result in dilution for these money funds, inasmuch as share purchase transactions at a money fund's NAV that has been adjusted downward by swing pricing would give rise to dilutive costs that are not clearly allocated away from the fund by the Proposed Amendments. We believe these concerns have not been sufficiently addressed by the SEC.

If the proposed swing pricing requirement is nonetheless adopted by the Commission, we would suggest that the Commission consider the following issues:

- **Clarification of the Applicability of Swing Pricing to Form N-1A Performance and Financial Reporting Requirements.** We suggest additional clarifying guidance be provided with respect to how swing pricing would be reflected for purposes of Form N-1A performance and financial reporting requirements.

- **<u>Exemption from Swing Price for Unregistered Money Funds</u>.** We suggest that the SEC provide an exemption from the swing pricing requirement for unregistered money funds that comply with the substantive provisions of Rule 2a-7 in accordance with Rule 12d1-1 under the 1940 Act.

More broadly, we believe that the SEC should first study and consider the impacts of other aspects of the Proposed Amendments related to further strengthening the resiliency of money funds, such as the removal of the liquidity fee and redemption gate provisions and the increased portfolio liquidity requirements, before adopting a novel and complex anti-dilution mechanism that may itself have unintended consequences, such as swing pricing, into Rule 2a-7.

A. Swing Pricing Poses Significant Operational Challenges

Although the SEC acknowledges in the Proposing Release that swing pricing would introduce new operational complexities to non-government institutional money funds, we believe the Proposing Release does not adequately address the magnitude and scope of these complexities, their costs and the potential adverse effects they may have on the utility of these funds to investors.

In particular, we do not believe that the Proposing Release adequately responded to issues raised by commenters to the December 2020 report of the President's Working Group on Financial Markets (the "PWG Report") regarding the impracticability of swing pricing for U.S. money funds. Some commenters to the PWG Report had highlighted that, although European funds (notably, not money funds) have used swing pricing successfully for several years, U.S. money funds face a fundamentally different operational infrastructure that would challenge the replication of that success in the United States. Certain unique features of the operational infrastructure for European funds (*e.g.,* earlier trading cut-off times, greater use of currency-based orders versus share- or percentage-based transactions, and more direct-sold funds) generally permit them to accurately estimate and/or actually receive flow information before the time they strike their NAVs. By contrast, in the United States, money funds, like other registered funds, typically receive their flow information from intermediaries with a delay, whereas timely flow information would be necessary to inform swing pricing decisions and to apply the swing factor to a fund's NAV prior to processing shareholder transactions.

This issue is heightened for money funds that strike their NAV multiple times per day, as these funds correspondingly would need to receive flow information sufficiently timely to calculate and apply a swing factor multiple times per day. This also may be challenging for money funds that offer same-day settlement, as these funds might need to impose earlier cut-off times for intraday orders to ensure that they receive their flow information prior to striking their final NAV of the day. Currently, complete order flow information might not be available to a fund until overnight settlement occurs. Accordingly, if non-government institutional money funds are forced to adopt swing pricing, we expect that these funds may need to sacrifice certain features that are enormously important to investors in order to accommodate the requirements of swing pricing (*e.g.*, by reducing

the number of daily NAV strikes or imposing earlier order cut-off times), and that these sacrifices would ultimately change the nature of these funds and their utility to investors.

B. Swing Pricing Was Previously Rejected as Inappropriate for Money Funds

When adopting the voluntary swing pricing regime for open-end investment companies in Rule 22c-1 under the 1940 Act, the SEC specifically excluded money funds from the rule.[3] The SEC cited multiple reasons for determining that swing pricing would be ill-suited for money funds. The adopting release for Rule 22c-1 noted that other liquidity risk management tools, such as the liquidity fee regime in place under current Rule 2a-7, are more appropriate for money funds due to their "unique minimum liquid investment requirements." The SEC further acknowledged that swing pricing could be harmful to money funds because "money market fund investors . . . are particularly sensitive to price volatility."

We believe these concerns remain relevant for money funds and their investors. We acknowledge that the SEC is proposing to remove the liquidity fee provisions from Rule 2a-7. However, the SEC could decide in the final rule that a type of liquidity fee may be a more appropriate liquidity risk management tool for money funds than swing pricing, as it appeared to believe at the time of adopting Rule 22c-1. We urge the SEC to carefully consider money funds' unique liquidity profiles and their shareholders' sensitivity to principal volatility before adopting the proposed swing pricing regime.

C. Swing Pricing May Have Unintended Dilutive Costs

As proposed, the swing pricing requirement would require a non-government institutional money fund that experiences net redemptions to adjust its NAV downward by its swing factor, which would have the effect of not only charging redeeming shareholders for the potentially dilutive costs of their redemptions, but also of permitting investors to purchase shares at the downward-adjusted NAV. The application of swing pricing to share purchase transactions is cursorily discussed only in the "Economic Analysis" section of the Proposing Release, where the SEC explains that swing pricing operates to share "the benefits of adjusting the NAV . . . between existing shareholders in the fund and subscribers" and, as such, to "incentivize subscriptions." We note that incentivizing investors to buy into the fund at a lower NAV could itself give rise to potential dilutive costs, inasmuch as the fund would be offering shares at a price that is lower than the NAV per share that an investor would receive once swing pricing is no longer active. However, the Proposing Release asserts without adequate consideration that these subscription-related dilutive costs would not ultimately be borne by the funds but instead by redeeming shareholders: "Under the proposal, the affected money market fund would recoup the full dilution costs by charging the redeemers for

[3] *See* Investment Company Swing Pricing, Investment Company Act Release No. 32316 (Oct. 13, 2016) ("Swing Pricing Release").

both the dilution cost of redemptions as well as the cost of allowing subscribers to buy into the fund at the lower adjusted NAV."

We question whether the swing pricing requirement as proposed accounts for these potential subscription-related dilutive costs when determining an affected fund's swing factor.[4] If it does not, the swing pricing requirement could have an unintended dilutive impact on an affected fund. Although subscriptions, if sufficient, would decrease net redemptions and ultimately cause a fund to no longer have net redemptions—and hence cause the fund to reduce and cease to apply the swing factor—it is not clear to us how this dynamic would address the allocation of subscription-related dilutive costs while swing pricing is active.[5] We also believe that, if a money fund were required to reflect these subscription-related dilutive costs in its swing factor, they would be very challenging to estimate because of the lack of accurate and timely information relating to fund flows, as discussed above.

Because the application of swing pricing could have unintended dilutive costs on affected funds, as described above, we urge the SEC to more thoroughly consider whether it would be appropriate to require money funds to apply swing pricing to share purchase transactions or, alternatively, to apply a different anti-dilution mechanism, such as a liquidity fee charged on redeeming shareholders, which would not impact the price at which an investor purchases fund shares.

D. Clarification of the Applicability of Swing Pricing to Form N-1A Performance and Financial Reporting Requirements

If the proposed swing pricing requirement is adopted by the SEC, we would suggest that additional clarifying guidance be provided with respect to how swing pricing would be reflected for purposes

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[4] The Proposed Amendments generally would require a fund's swing factor to be based on the costs of selling a vertical slice of its portfolio in an amount to satisfy net redemptions.

[5] Unlike the Proposing Release, the Swing Pricing Release directly addresses the possibility that purchases at a downward adjusted NAV as a result of swing pricing could cause dilution. However, it suggests that swing pricing under Rule 22c-1 "would not create dilution for non-redeeming shareholders (even though the purchasing shareholders may be receiving a lower price than would be the case if the NAV was not adjusted downward)." The Swing Pricing Release explains this view by noting both that "shareholders' purchase activity would provide liquidity to the fund, which could reduce the fund's costs in meeting shareholders' redemption requests," and also that, because swing pricing under Rule 22c-1 would apply only after a fund crosses its swing threshold, "purchasing shareholders are only likely to receive a NAV that is adjusted downward when the fund experiences substantial outflows." We question whether these considerations would apply to swing pricing under the Proposed Amendments, as money funds are already subject to "unique minimum liquid investment requirements" (as discussed above), and swing pricing under the Proposed Amendments would apply not only when a fund experiences "substantial outflows" but whenever it experiences net redemptions.

of Form N-1A performance and financial reporting requirements. Unlike the amendments to Form N-1A included in the SEC's adoption of voluntary swing pricing for open-end investment companies in 2016, the amendments to Form N-1A included in the Proposed Amendments did not address how swing pricing under Rule 2a-7 should be reflected for purposes of the performance bar chart and average annual total returns table information required by Item 4 of Form N-1A or the financial highlight information required by Item 13 of Form N-1A. Additionally, the Proposing Release did not address whether or how swing pricing would be reflected in the calculation of a money fund's yield under Item 26 of Form N-1A. We urge the Commission to clarify these points if it seeks to proceed with the swing pricing requirement.

E. Exemption from Swing Pricing for Unregistered Money Funds

We urge the Commission to consider the effect of the Proposing Release on unregistered money funds that currently conform to the requirements of Rule 12d1-1 under the 1940 Act.[6] These unregistered money funds serve as valuable cash management vehicles for many registered investment companies. Through Rule 12d1-1, the SEC has provided registered investment companies with the ability to invest in unregistered money funds that comply with Rule 2a-7. However, we believe the swing pricing requirement is inappropriate for these unregistered money funds because these funds do not face the same perceived concerns as other non-government institutional money funds due to the nature of their primary shareholder base of registered investment companies. Accordingly, we ask that the Commission specify in the final rule that the swing pricing requirement, if adopted, is not applicable to unregistered money funds that serve as cash management vehicles for registered investment companies.

Unregistered money funds currently are a valuable tool for an acquiring investment company because such unregistered money funds are designed to accommodate the significant daily inflows and outflows of cash of the acquiring investment company. Because these funds are privately offered primarily to registered investment companies, they can be operated at a lower cost than registered money funds. In order for a registered investment company to continue to invest in unregistered money funds, the unregistered money fund would have to comply with any amendments to Rule 2a-7.

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6 Section 12(d)(1)(A) of the 1940 Act limits the amount one investment company may invest in shares of other investment companies. In 2006, the Commission adopted several rules under Section 12(d)(1) to broaden the ability of an investment company to invest in shares of other investment companies, codifying a number of exemptive orders that had previously been issued by the Commission. One such rule – Rule 12d1-1 – allows investment companies to invest in shares of money funds in excess of the limits of Section 12(d)(1). Rule 12d1-1(b)(2) provides that investment companies may invest in an unregistered money fund if the acquiring investment company reasonably believes that the unregistered money fund, among other things, operates in compliance with Rule 2a-7.

The Proposing Release did not appear to anticipate the circumstances of these unregistered money funds, for which compliance with the swing pricing requirement should not, we believe, be required. We believe the swing pricing requirement should not be applied to unregistered money funds because these funds do not present the perceived concerns that the Commission aimed to address in the Proposing Release. Due to the nature of the relationship between these unregistered funds and the acquiring investment companies, unregistered money funds do not present the liquidity risks and systemic risks that the Proposed Amendments appear intended to reduce. Unregistered money funds are often created solely for investment by the acquiring investment companies and typically have the same sponsor as the acquiring investment companies. In our experience, these unregistered money funds have not been subject to the same redemption pressures as registered non-government institutional money funds. Accordingly, we suggest that the Commission provide an exemption from the swing pricing requirement for unregistered money funds that comply with the substantive provisions of Rule 2a-7 under Rule 12d1-1.

III. AMENDMENTS TO PORTFOLIO LIQUIDITY REQUIREMENTS

The Proposed Amendments would increase a money fund's minimum daily liquid asset requirement from 10% to 25% of its total assets and weekly liquid asset requirement from 30% to 50% of its total assets. (Tax-exempt money funds would continue to not be subject to the daily liquid asset requirements of Rule 2a-7.) Although we do not object to increases to the minimum daily and weekly liquid assets requirements, we believe it would be appropriate for the SEC to consider whether more moderate increases may be sufficient to further enhance money fund resiliency, especially in light of the anticipated ability of money fund managers to more freely use liquid assets to meet redemptions with the proposed removal of the liquidity fee and redemption gate provisions. We further note that a "one-size-fits-all" approach to liquidity may not be necessary given other liquidity risk management tools (*e.g.,* prudential shareholder concentration limits).

Additionally, a more moderate increase would better balance enhancements to money fund resiliency with the yield pressures that can be expected to result if money funds are obligated to meet higher minimum liquid asset requirements. Although the increased minimum liquid asset requirements would apply to all money funds, the increases would not broadly impact government money funds, which are already required to invest 99.5% of their total assets in instruments that generally qualify as daily and weekly liquid assets under Rule 2a-7. But by effectively requiring non-government money funds to hold higher percentages of their assets in daily and weekly liquid assets, the increased minimum liquid asset requirements can be expected to generally reduce yields for non-government money funds and, as such, ultimately compress the yield spreads between government and non-government money funds. In our view, the SEC must consider and strike the appropriate balance between increases to minimum liquid asset levels and resultant yield pressures, which could diminish the viability of non-government money funds as cash management vehicles with both higher yields and investment risks than government money funds.

Moreover, if investors abandon non-government money funds due to reduced yields, the demand for the instruments in which these funds invest, such as certain municipal debt securities and commercial paper, could also be reduced. This would have the unintended consequence of disrupting short-term funding markets, which could have broader negative macroeconomic consequences. The SEC should more carefully consider the potential costs associated with the increased liquidity requirements and balance them against the benefits to money fund resiliency in determining the appropriate minimum liquid asset thresholds levels.

IV. AMENDMENTS RELATED TO POTENTIAL NEGATIVE INTEREST RATES

The SEC proposed certain amendments to Rule 2a-7 to address the possibility of a negative interest rate environment. Although the United States has never experienced negative interest rates, the Proposing Release noted that, for much of the past fifteen years, the Federal Reserve set the lower bound of the target federal funds rate at 0.00%. In its current form, Rule 2a-7 does not dictate what actions a money fund can or cannot take in response to a negative interest rate environment. Instead, the pricing provisions of current Rule 2a-7 state that government and retail money funds (*i.e.*, stable NAV money funds) may seek to maintain a stable share price by using amortized cost and/or penny-rounding accounting methods. A stable NAV money fund may only use those methods if the fund's board of directors believes that the stable share price fairly reflects the fund's market-based NAV per share. To this end, Rule 2a-7 also requires stable NAV money funds to periodically calculate the market-based value of their portfolio ("shadow price") and compare it to the fund's stable share price. If the deviation between these two values exceeds 0.5%, the fund's board of directors must consider what action, if any, should be taken, including whether to re-price the fund's securities above or below the fund's stable share price (*i.e.*, "break the buck").[7]

In the Proposing Release, the SEC stated—without corresponding analysis—its belief that, if a stable NAV money fund's gross yield becomes negative due to negative interest rates, such fund's board of directors may determine that the stable share price does not fairly reflect the fund's market-based price per share. If the fund's board of directors makes such a determination, the Proposing Release noted that the fund would no longer be able to use amortized cost and/or penny-rounding accounting methods to maintain its stable share price and would be required to convert to a floating share price. The Proposing Release also noted that a stable NAV money fund's board of directors could reasonably require the fund to convert to a floating NAV to prevent material dilution or other unfair results to shareholders.

In order to provide regulatory clarity and facilitate a stable NAV money fund's potential transition to a floating NAV per share, the SEC proposed two reforms in the Proposing Release: (i) requiring

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[7] Additionally, regardless of the extent of the deviation in the fund's shadow price, Rule 2a-7 requires the board of a stable NAV money fund to consider appropriate action whenever the board believes the extent of any deviation may result in material dilution or other unfair results to investors or current shareholders.

a stable NAV money fund to determine that its financial intermediaries can continue to process its share transactions in the event that the fund converts to a floating NAV; and (ii) prohibiting a stable NAV money fund from seeking to maintain a stable NAV per share by reducing the number of its shares outstanding (*i.e.*, through the implementation of a reverse distribution mechanism, routine reverse stock split or other device that periodically would reduce the number of the fund's outstanding shares in order to maintain a stable share price). For the reasons discussed below, we oppose both of these proposals.

A. Certification from Financial Intermediaries

The SEC proposed to require a government or retail money fund (or the fund's principal underwriter or transfer agent on its behalf) to determine that financial intermediaries that submit orders to purchase or redeem the fund's shares have the capacity to redeem and sell the fund's shares at prices that do not correspond to a stable price per share (*i.e.*, if the fund converts to a floating NAV). If this determination cannot be made, the fund must prohibit such an intermediary from purchasing the fund's shares in nominee name.

We oppose the proposed requirement for stable NAV money funds to determine that each financial intermediary has the capacity to redeem and sell securities issued by a fund if the fund converts to a floating NAV.

We note that implementing this requirement would be extremely expensive for many financial intermediaries, while the benefits are speculative. It is our understanding that certain financial intermediary platforms, most notably sweep platforms that operate on a "dollar in, dollar out" infrastructure, currently cannot accommodate transacting in stable NAV money fund shares at a price other than $1.00 per share. These platforms are designed to process extremely large volumes of transactions that automatically "sweep" cash in and out of money funds.[8] We understand that overhauling the infrastructure used in sweep platforms to accommodate a floating NAV would impose a significant cost on financial intermediaries. Under current Rule 2a-7, if a stable NAV money fund decides to convert to a floating NAV, some financial intermediaries may submit redemption orders for shares during the period that the fund is floating its NAV rather than incur the costs associated with overhauling such systems. Such intermediaries could reinvest in these funds if and when the fund converts back to a stable NAV.

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[8] In a sweep transaction, customer cash balances are automatically "swept" into investments in money funds. The money fund's shares are owned by the customers, but the sweep transaction is affected through fund accounts registered to the intermediary, typically a broker-dealer or a bank. We note that some financial intermediary platforms may offer floating NAV money funds; however, these systems are built on a separate infrastructure that typically requires purchase or sale instructions rather than an automated "sweep" process.

However, because the Proposed Amendments would require the proposed certifications in advance, if financial intermediaries are unwilling to preemptively change their systems underlying sweep platforms and other similar platforms that rely on a money fund maintaining a stable NAV, such stable NAV money funds would not receive the proposed certifications from those financial intermediaries, and those intermediaries would not be eligible to offer shares of such funds. In such a situation, it is highly likely that assets in these funds would dramatically decrease even though interest rates are currently not at risk of becoming negative, as financial intermediaries generate a significant portion of these funds' order volume and activity. This ultimately harms shareholders. We note that money funds, particularly government money funds, play an important role in the financial system by meeting the short-term investment needs of investors and the direct financing for governments, businesses and financial institutions. The SEC should carefully consider the consequences of potentially disrupting this market, especially given that the benefits of this proposed requirement (*i.e.*, confirming in advance that an intermediary can process a stable NAV money fund at a floating NAV per share in a negative interest rate environment) are purely hypothetical.

We note that the possibility of negative interest rates in the United States is becoming increasingly remote. The SEC did not identify in the Proposing Release a single sitting monetary policymaker who has advocated for negative interest rates. In fact, several policymakers have explicitly stated the opposite—that negative interest rates would not be an attractive policy in the United States. Further, the Federal Reserve is currently pursuing a higher interest rate policy to combat increasing inflationary pressure. We believe it is not an appropriate time for the SEC to impose a significant, costly and potentially disruptive new requirement on money funds and their intermediaries.

B. Reverse Distribution Mechanism

The Proposed Amendments would prohibit stable NAV money funds from implementing a reverse distribution mechanism, routine reverse stock split or other device that periodically would reduce the number of the fund's outstanding shares in order to maintain a stable share price. A reverse distribution mechanism (or "RDM") is a mechanism by which a stable NAV money fund reduces the number of its shares outstanding in an amount equal to the negative accrual each day in order to cover negative yields. These negative distributions would be allocated to shareholders on a *pro rata* basis through the fund's transfer agent. Similarly, a reverse stock split would reduce the number of shares in an investor's account in order for the fund to maintain a stable share price. All other things being equal, we note that the economic effect of an RDM distribution to a shareholder would generally be identical to the conversion to a floating NAV per share. The reduction in the number of shares held by a shareholder in stable NAV money fund that uses RDM would be equal to the reduction in the market-based NAV per share held by a shareholder in a floating NAV money fund caused by its realization of negative net income.

We oppose the proposed prohibition on the use of an RDM or reverse stock split. As noted above, the SEC indicated in the Proposing Release that it may be inappropriate for a stable NAV money

fund that experiences gross negative yields to use amortized cost and/or penny-rounding accounting methods to maintain its stable share price, and a fund's board could determine under such circumstances to convert the fund to a floating share price. We do not agree that converting to a floating NAV is the *only* allowable response to a negative yield environment under the rule (although a fund's board of directors could certainly choose to float a fund's NAV).

In order to use the amortized cost and penny-rounding methods to maintain a stable NAV, a fund's board must first determine that maintaining a stable NAV is in the best interests of the fund and its shareholders. The fund can continue to use those methods only so long as the board of directors believes that the fund's stable share price fairly reflects its shadow price. To this end, Rule 2a-7 requires a stable NAV money fund to calculate its shadow price and compare it to the fund's stable share price. If the deviation between the stable share price and the shadow price exceeds 0.5 percent, the board must consider what action, if any, should be taken to prevent material dilution of shareholders' interests in the fund.[9] Thus, Rule 2a-7 gives fund boards the flexibility to determine what action will be in the best interest of shareholders to address the deviation in the fund's shadow price or prevent such dilution of interests.

The staff of the SEC has previously considered the consequences of a stable NAV money fund engaging in a reverse stock split to maintain a stable share price. In its "frequently asked questions" to the 2014 money fund reforms, the SEC staff acknowledged that a stable NAV money fund could potentially use a reverse stock split to stabilize its NAV:

> **Q. If a stable NAV money market fund engages in a reverse stock split in order to increase or stabilize its NAV per share, might such action be reportable on Form N-CR?**
>
> A. Yes. Part D of Form N-CR requires a stable NAV money market fund to file a report if its current NAV per share deviates downward from its intended stable price per share by more than ¼ of 1 percent. The staff understands that a reverse stock split could in effect mask what might otherwise be a significant deviation in the price per share. Accordingly, if such a fund would have experienced a deviation of more than ¼ of 1 percent but for the reverse stock split, the staff believes such deviation

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[9] Regardless of the extent of the deviation between the fund's shadow price and stable price, a stable NAV money fund's board is required to periodically monitor such deviation and to cause the fund to take action to prevent material dilution or other unfair results to investors or existing shareholders if it believes the extent of any deviation will result in material dilution or unfair results.

> should still be disclosed on Part D, calculated as if the reverse stock split had not occurred.[10]

This FAQ demonstrates the SEC staff's then-current view that, under current Rule 2a-7, a reverse stock split is not incompatible with a stable NAV money fund's board finding that the stable share price continues to "fairly reflect" the market-based NAV per share.

A stable NAV money fund's board of directors should retain the authority to determine that implementing a reverse stock split or RDM is in the best interest of the fund and its shareholders to address a deviation in the funds shadow price and prevent a material dilution of shareholders' interests. Boards currently have this authority under Rule 2a-7, and they should continue to be able to decide, in good faith and using their reasonable business judgement, the actions they deem appropriate and in the best interests of the fund to address a deviation in the fund's shadow price. We believe a stable NAV money fund's board can reasonably determine that the use of an RDM or reverse stock split in a negative yield environment would result in better outcomes for investors than converting to a floating NAV or, alternatively, liquidating the fund. Indeed, a shareholder may *prefer* a stable $1.00 share price with a corresponding decrease in principal balance rather than a floating share price with a similar decrease in principal balance.

A stable NAV money fund's board may consider a variety of factors in deciding to implement an RDM or reverse stock split rather than converting to a floating NAV. For example, a fund board may reasonably conclude, in the exercise of its reasonable business judgement, that negative interest rates would only be in effect for a short period of time or may take time to degrade the yield of the fund's portfolio. The board could decide that transitioning the fund to a floating NAV during a period of negative rates and then converting back to a stable NAV when rates normalize would be operationally challenging and potentially more confusing to investors than using an RDM. Additionally, a board may recognize that converting to a floating NAV money fund could eliminate key benefits to its retail investors. Many investors, particularly retail investors, may prefer to invest in a stable NAV money fund that applies an RDM over a money fund with a floating NAV per share. We note that brokers and fund sponsors may offer investors in stable NAV money funds various additional features, such as ATM access, check writing, and ACH and Fedwire transfers. If such funds were forced to convert to a floating NAV per share, investors would lose these valuable and convenient features.

As discussed above, maintaining a stable NAV per share enables the processing of cash balances through certain cash sweep programs. Because such sweep programs cannot typically accommodate a floating NAV per share, investors would also lose this service. The board may also consider that a negative interest rate environment would have wide-ranging economic consequences, including impacts to other short-term cash management products. For example,

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[10] Division of Investment Management, 2014 Money Market Fund Reform Frequently Asked Questions (revised Feb. 17, 2021), Question No. 11.

banks and other financial institutions would likely impose charges on bank deposit accounts to the extent they are able to hold such large deposits in cash at all. These investors could prefer a stable NAV money fund using an RDM to other alternatives. Under these circumstances, a stable NAV money fund's board could reasonably decide that implementing a reverse stock split or RDM would be in the best interests of the fund and its current and potential shareholders.

The SEC expressed its belief that investors, particularly retail investors who hold government and retail money fund shares, would be confused or misled by the use of a reverse stock split or RDM, because investors will observe declining account balances while the fund's share price remains stable. We do not believe that investors will be misled by the use of a reverse stock split or RDM for various reasons. First, we note that investors will likely be more focused on the overall balance in their account rather than the share price of the individual funds they hold, and thus will not be confused that the value of their investment has gone down. Additionally, the U.S. mutual fund market is heavily intermediated, and financial intermediaries are well-equipped to assist their clients in understanding the mechanics and consequences of an RDM or a reverse stock split. Next, as noted above, investors would likely face charges from banks and other financial institutions on other short-term cash management products in a negative interest rate environment, including deposit accounts that may charge fees for holding cash. In such an environment, investors would not be confused that their investments in a stable NAV money fund have also lost value.[11] In any event, a fund's board of directors would have to carefully weigh the pros and cons of an RDM or reverse stock split (including potential shareholder confusion) before determining that these mechanisms are preferable to a floating NAV. Boards and fund management are well equipped to do this.

We also note that, as the SEC acknowledged in the Proposing Release, money funds in Europe used RDMs for a period of time when the European Central Bank pursued a negative interest rate policy following the sovereign debt crisis. The SEC noted that European money funds are typically only held by large institutional investors who are more likely to be able to understand the intricacy of RDM. Although RDM is no longer available in Europe due to regulatory changes unrelated to the effectiveness of RDM, we understand that many investors preferred funds that used RDM over floating NAV funds, and there was not widespread investor confusion over the mechanism. The proven effectiveness of RDM in Europe—and investors' preference there for funds using RDM—outweighs the potential for investor confusion, which can be mitigated.

To the extent the SEC is concerned that investors may be confused by a reverse stock split or RDM, we believe that robust disclosure in plain English will adequately alert investors to the possibility and mechanics of a reverse stock split or RDM. Stable NAV money funds could provide this

[11] We note that retail investors may invest in non-government institutional funds that, if the Proposed Amendments are adopted, would be subject to the swing pricing requirement. We believe that a swing pricing regime would be as or more confusing to those retail investors than RDM or a reverse stock split in the very rare circumstance of a negative interest rate environment.

disclosure in their registration statements that are delivered to investors at the time of their investment, and, if a fund decides to implement a reverse stock split or RDM, the fund could alert investors via a prospectus supplement. Stable NAV money funds could also offer this disclosure and other investor education materials on their websites.

We believe that prohibiting stable NAV money funds from engaging in reverse stock splits or using an RDM unnecessarily limits these funds' ability to operate in a negative interest rate environment. In particular, we note that government money funds are often the vehicle of choice for investors in times of economic uncertainty. If these funds were prohibited from implementing reverse stock splits or an RDM and were instead forced to convert to a floating NAV when yields turn negative, their usefulness as a vehicle would be severely limited at the same time investors would need these products the most. We believe the SEC should respect investors' preference for stable NAV products and continue to allow stable NAV money fund boards to determine whether the use of reverse stock splits or an RDM would be in the best interests of a fund and its shareholders.[12]

V. AMENDMENTS TO REPORTING REQUIREMENTS

A. Form N-MFP

The Proposed Amendments would add several new disclosure items to Form N-MFP. First, the Proposed Amendments would require money funds to disclose the name and percentage ownership of any person that owns more than 5% of the shares of any share class of a money fund. Second, for a non-government institutional money fund, the Proposed Amendments would require the fund to identify the percentage of investors belonging to certain categories of investors (*e.g.*, non-financial corporations, pension plans and other categories). Third, the Proposed Amendments would require disclosure of the amount of portfolio securities a prime money fund sold or disposed of during the relevant month, excluding securities held until maturity. Further, the Proposed Amendments would require a non-government institutional money fund to disclose the number of times it applied a swing factor during the reporting period, as well as each swing factor applied.

If the Commission moves forward with the Proposed Amendments to Form N-MFP, we strongly suggest that the period of time between the end of the month and the due date for the filing be lengthened to allow additional time for the accuracy of the information included in the filing to be verified. Under Rule 30b1-7 under the 1940 Act, Form N-MFP must be filed no later than the fifth business day of the month. Given the volume of new information required to be reported on Form

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[12] We also note that the issues raised by RDM and reverse stock splits are unrelated to the primary purposes of this rulemaking. The SEC could therefore choose to delay any decisions on these issues without impeding on progress to make the money fund industry more resilient.

N-MFP and the increased frequency of certain data points, we believe that the current five business days may be insufficient time to prepare these filings.

We also believe that more frequent and rapid reporting of 5% beneficial holders of a money fund presents operational challenges and investor privacy concerns. As discussed in the Proposing Release, this requirement is intended to align with the analysis of beneficial holders that funds already must conduct each year for purposes of updating their registration statements. However, per Form N-1A, this information is provided in fund registration statements on up to a 30-day lag and only on a single, specified date once per year. Providing such information on a 5-day lag may be challenging for money funds to accurately gather and verify. Additionally, by providing this information for beneficial holders on a monthly basis, investors, particularly natural persons, are at risk of having their investments tracked or monitored throughout the year. If the SEC chooses to adopt the proposed reporting requirement, we recommend it should include an exception for beneficial holders who are natural persons or make this information non-public.

B. Form N-CR

Under the Proposed Amendments, a money fund would be required to publicly file a report on Form N-CR if the percentage of its total assets in daily liquid assets or weekly liquid assets falls below 12.5% or 25%, respectively. The money fund would be required to file the report on Form N-CR within one business day of such a "liquidity threshold event" and would be required to file an amended report containing additional information within four business days of such event. A money fund would also be required to notify its board of directors of liquidity threshold events.

We note that Form N-RN (formerly, Form N-LIQUID), which is used by registered open-end funds (other than money funds) to report if more than 15% of such fund's net assets are, or become, illiquid investments, is not made public by the Commission.[13] Likewise, Form N-PORT's requirement to report the number of days a fund is below its highly liquid asset minimum during the reporting period is confidential. As discussed in the Liquidity Rule Release, making detailed information about a fund's liquidity public could have severe negative consequences, including exposing a fund to predatory trading.[14] We believe that the SEC should take similar considerations into account with respect to liquidity threshold events reported on Form N-CR and whether any such public reporting is necessary or appropriate.[15]

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13 *See* Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (October 13, 2016) at p. 299 ("Liquidity Rule Release").

14 *See id.* at pp. 230, 299.

15 Section 45(a) of the 1940 Act requires information in investment company forms to be made available to the public, unless the Commission finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors.

Furthermore, we believe that it is highly possible that, if the Commission requires money funds to file public reports on Form N-CR upon the occurrence of liquidity threshold events, the 12.5% daily liquid asset and 25% weekly liquid asset thresholds could become new bright lines that ultimately contribute to investor redemption behavior and incentivize money fund managers to maintain liquid asset levels above these thresholds, rather than use those assets to meet redemptions, similar to the unintended effects identified by the SEC in connection with the current thresholds for liquidity fees and redemption gates. In this regard, we note that information regarding a money fund's levels of liquid assets would continue to be publicly available on its website, which provides sufficient transparency to investors without trigging a filing event with the SEC.

Moreover, under the Proposed Amendments, a money fund would be required to report to its board of directors when it experiences a liquidity threshold event. Board oversight was cited as an important factor by the Commission in finding that public reporting of a fund's falling below its highly liquid asset minimum on Form N-PORT was neither necessary nor appropriate.[16] In light of the risk that investors and managers could see the new reporting requirement as a bright line, the requirement to notify the money fund's board of a liquidity threshold event, as well as the required website disclosure, we believe it is neither necessary nor appropriate in the public interest or for the protection of investors to make liquidity threshold events reported on Form N-CR public. Therefore, if the Commission adopts the proposed changes to Form N-CR, we urge it to make reporting of liquidity threshold events confidential.

VI. COMPLIANCE DATE

As proposed, money funds would be required to comply with the swing pricing requirement and the requirement that stable NAV money funds determine that financial intermediaries that submit orders to buy or sell shares are able to transact at a floating NAV only twelve months after the effective date of the Proposed Amendments. We do not believe that this compliance period would provide money funds, their sponsors, service providers and intermediaries with sufficient time to develop the systems necessary to operationally accommodate swing pricing; and we similarly do not believe that one year would be sufficient time for a fund's intermediaries to build the capacity to process stable NAV money fund share transactions at a floating NAV. Accordingly, we urge the SEC to provide a significantly longer compliance date for at least these aspects of the Proposed Amendments.

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We appreciate the opportunity to comment on the Proposing Release. Please feel free to contact Stephen T. Cohen at 202.261.3304, Brenden P. Carroll at 202.261.3458, James V. Catano at

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16 *See* Liquidity Rule Release, *supra* note 13, at p. 230.

202.261.3376, Megan C. Johnson at 202.261.3351, Neema Nassiri at 202.261.3393 or Devon M. Roberson at 202.261.3477 with any questions about this submission.

Very truly yours,

/s/ Dechert LLP

Dechert LLP

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